

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-fifth Session
March 25, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:42 p.m. on Wednesday, March 25, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Warren B. Hardy II

GUEST LEGISLATORS PRESENT:

Senator Dennis Nolan, Clark County Senatorial District No. 9

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Carol Allen, Committee Secretary

OTHERS PRESENT:

Stephen Sill, DDS
Joel Glover, DDS, Nevada Dental Association
Caryn Solie, RDH, Nevada Dental Hygienists' Association
William Pappas, DDS, President, Board of Dental Examiners of Nevada
Kathleen Kelly, Executive Director, Board of Dental Examiners of Nevada

Marla L. McDade Williams, MPA, Bureau Chief, Bureau of Health Care Quality and Compliance, Health Division, Department of Health and Human Services

Dr. Edward Sweeten, Radiation Physicist, Health Division, Department of Health and Human Services, Las Vegas Office

Dan R. Reaser, Attorney, Lionel Sawyer & Collins; Willamette Dental Insurance, Inc.

Lynn S. Fulstone, Attorney, Lionel Sawyer & Collins; Willamette Dental Insurance, Inc.

Robert Moore, Vice President, Wells Fargo Insurance Services

Tony Guillen, DDS, Board of Dental Examiners of Nevada

Brad Spires, Nevada Association of Realtors; ReMax Realty

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry

Marlene Lockard, Nevada Subcontractors Association

Chair Maggie Carlton opened the meeting with Senate Bill (S.B.) 129.

SENATE BILL 129: Revises provisions governing continuing education for dentists and dental hygienists. (BDR 54-769)

Senator Hardy introduced his bill, S.B. 129, with coauthor Stephen Sill, DDS, of Las Vegas. Doctor Sill said in 2003 *Nevada Revised Statutes* (NRS) 631.342, mandated dentists and dental hygienists take a course about bioterrorism. He attended the course and was disappointed in the quality of its presentation.

He said a few years ago the *Journal of the American Dental Association* came up with a new concept that would provide training for all health-care professionals in disaster situations. He proposed that dentists and hygienists be allowed to take the bioterrorism class or the one on disaster relief and disaster assistance suggested by the Journal. These courses would have a national scope, so licensees not living in Nevada could take the classes locally and receive certification of their extra training in bioterrorism, earthquakes, fires, etc. Chair Carlton said his proposal sounded very reasonable.

Senator Rhoads asked if dentists in rural Nevada would be able to take the courses in their areas. Dr. Sill said they could take online training, which would also allow dentists living out of state, to keep their Nevada licenses current.

Chair Carlton inquired if bioterrorist and disaster classes were similar, and how many continuing-education hours were needed. Dr. Sill replied the original bioterrorist class was a one-time, four-hour class that was usually easier to find online than in live format. He said the disaster class would provide more resources to meet the continuing-education requirement, and have broader applications than just terrorism. Chair Carlton asked for examples of what was taught in the bioterrorist class. He said the anthrax class, the respiratory illness, was taught but did not apply to dentistry. However, with the other class, dental professionals could assist with broken bones, cuts and scrapes in earthquakes or disasters. He said his dental office could be converted into a surgery center where they could do stitches, minor X rays or setting broken bones. His office has dental lights, suction apparatus and anesthetics.

Joel Glover, DDS, Nevada Dental Association, spoke in support of the bill. He said they were in favor of anything that improves and educates their members because their primary mission is to provide the best dental care possible to the citizens of Nevada. He said the legislation was important as dental personnel often serve in times of holocaust or terrorism. Caryn Solie, RDH, Nevada Dental Hygienists' Association, spoke in favor of the bill. She said in the September 11, 2001, tragedy dental hygienists were able to help in the identification of dental remains. She said this was important knowledge for hygienists to have.

William Pappas, DDS, President, Board of Dental Examiners of Nevada (BDE), submitted written testimony in support of S.B. 129 ([Exhibit C](#)). He said BDE supports Nevada's concern for preparedness in response to catastrophic events.

Chair Carlton noted no opposition to the bill. She then asked Senator Hardy if this could have been done in regulation. Senator Hardy replied that it needed statutory authority because statute specifically mentioned what courses were acceptable.

Chair Carlton closed the hearing on S.B. 129 and opened the hearing on S.B. 180.

SENATE BILL 180: Makes various changes relating to the licensing and inspection of dental X-ray machines. (BDR 54-770)

Senator Hardy said he and Dr. Sill were introducing S.B. 180, as it made better sense for the X-ray machines to be licensed and regulated by the BDE instead of the State Board of Health.

Dr. Sill stated he was on the State Board of Medical Examiners but was reacting to a problem brought up at a Dental Society meeting. He said this bill is a solution to the problem of irregular inspections of X-ray machines. An inspection costs \$140 per year, plus the cost of a technician to do any repairs; renewal of a dental license is \$250 per year. He questioned whether the occasional inspection was just a source of revenue for the Board of Health. He wants the inspections to be part of the license renewal process, making it a more consistent matter of public health and safety.

He proposed the BDE authorize a designated person to perform the inspections. Current law says after a machine is found defective and fixed, it will be reinspected in the next three to five years. Dr. Sill would like to change that reinspection to one year and if still defective, another inspection to be done within six months. If a machine fails inspection three times, it would have to be removed from service. He said this would provide a measure of safety not currently in the rules and regulations.

He said dentists need to post copies of rules and regulations from the Board of Health in their offices, but do not have to understand them. He said that was ridiculous. He said they also have to submit a dosimetry report to prove their staff is not being exposed to excess radiation. They must run the dosimetry test themselves. The Board was relying on them to comply with the rules for inspection.

Dr. Sill said the BDE has a good background and good practices. His sterilizer is much more of a public safety issue than his X-ray machine, but the Board of Health does not require any state inspection or license for it. His staff tests his machines weekly. The BDE requires a dentist to comply with infection control measures for intravenous sedations and general anesthesia. He said sedation and sterilization are more important, and can be a much greater source of problems for the public. He said this bill has the potential to reduce the regulatory cost for the practitioners and improve public safety.

Dr. Sill said the current rules for X-ray machines were established when the machines use to take long exposure times; new machines are much faster. Even

if the machines are not in proper calibration, with the faster exposure times, they are not a danger to the public. He said if they were a danger, he would expect the Board to be inspecting them more consistently. Some dentists at the Dental Society meeting he attended said they had practiced over 20 years without ever having their X-ray machines inspected. He said this bill would provide a more consistent mechanism for regular inspections and removal of harmful machines.

Senator Rhoads asked Committee staff to explain the fiscal note. Kelly S. Gregory, Committee Policy Analyst, asked if a member of the BDE could explain the fiscal note while she looked them up. Chair Carlton asked why a fiscal note should be attached to the bill if the BDE is a stand-alone, fee-based entity; the cost would go to the licensees. Ms. Gregory said there were two notes: one submitted by the Division of Health and one submitted by the BDE. The Division of Health fiscal note showed the impact of removing the program from their authority and the BDE note showed what it cost to implement the program. She asked BDE to explain how they calculated the revenues and expenses for the program.

Kathleen Kelly, Executive Director, Board of Dental Examiners of Nevada, said they provided what they believed would be the cost to implement the bill through 2011. She said they would need additional staff and have budgeting requirements for travel, operating, legal and insurance. She said they referenced the revenue in relation to the current inspection fee.

Senator Hardy asked if they currently do any inspections. Ms. Kelly answered yes; they inspect those applying for permits to administer conscious sedations, deep sedations and general anesthesia. She said both the office and the administering individual are issued a permit. Senator Hardy asked if it was a one-time inspection. Ms. Kelly said they do not do regular, ongoing inspections other than those associated with anesthesia. The Board can enter a dental office where a permit for anesthesia has been issued, at any time, for notice of complaint or authorized investigations. Otherwise, they inspect the office and evaluate the permit holder at least once every five years. She said the Board has held rule-making sessions, workshops and discussions regarding enforcement of the Centers for Disease Control and Prevention (CDC) guidelines that all licensees are required to follow, which could include, but not at this time, an inspection of CDC compliance.

Senator Hardy said when the original legislation was drafted, the X-ray machines were a lot more dangerous than they are now, and needed more inspections. He did not see why the BDE operating costs for inspecting the X-ray machines should change much. He said when agencies do not want to do something, they make it unachievable by what is called death by fiscal note. Senator Rhoads asked if page 10 of the fiscal note listed the cost as \$333,000 in 2010, \$440,000 in 2011, plus they would have to hire 5 new physicians. Chair Carlton said correct. Senator Hardy replied that was the definition of death by fiscal note.

Ms. Gregory pointed out the fiscal note looked like a positive increase. Ms. Kelly said there would be an abundance of revenue given the current permit fee of \$140 per year. She said the effective date for 2010 would be October 1, already within the fiscal year, so only a portion of the fiscal year was noted. Fiscal year 2011 would be the full fiscal year, and that was the difference in the dollar figures. She said she did not know if BDE could complete the responsibilities within the revenue amount. She added they appoint inspectors from their organization for a fee of \$100 per day. The inspectors hold jobs in the dental profession and will inspect up to 4,300 dental X-ray machines throughout Nevada. Senator Hardy said he was willing to spend time with BDE to reach a consensus on the bill.

Chair Carlton asked that the Committee keep in mind the bill did not include any tax dollars, the fees would be charged to the licensees. Senator Hardy said Dr. Sill believes this is a service best provided by BDE who understand the dental business and the nature of the machines used.

Chair Carlton asked if BDE wanted a position noted on the attendance roster. Dr. Pappas submitted written testimony in opposition of S.B. 180 ([Exhibit D](#)). He said while BDE was opposed, they provided the fiscal note as requested, and would cooperate with the desire of the Legislature. He suggested a thorough review of the processes currently employed by the radiological health section and communication with affected parties could resolve some of the concerns.

Dr. Glover said his association was always in favor of inspected and properly maintained equipment. He said newer, digitalization of radiation makes machines much better, but it still requires utilization and oversight. He has seen two increases in the cost of registering X-ray machines in the last eight years, with some decrease in inspections. He said his association feels BDE would be

better in their efforts to do the inspections, but they are also very cognizant that this economy, in this time of year, and the costs involved, could have serious effects, and they would like to see what is best for the best price.

Marla L. McDade Williams, MPA, Bureau Chief, Bureau of Health Care Quality and Compliance, Health Division, Department of Health and Human Services, in opposition of the bill, said they have significant staff trained to do the functions, which go beyond inspecting individual machines; they inspect the overall programs in place. They enact the fees that are charged back to the licensees according to the work they anticipate doing. Their fees are based on a schedule of inspections every five years. She stated in the past they have had issues recruiting people to fill positions as other states pay higher salaries. She said there is potential to create two different radiation programs in Nevada, one for BDE and one for the Health Division's radiation control. She said they are open to discussion with all parties to work out issues and move forward.

Senator Hardy praised her refreshing testimony and asked if there were reasons she felt her agency could provide the better service. Ms. Williams said this was a technical area that was problematic and they were equipped to handle it. She said a big concern was having two different types of inspection processes for the same types of equipment. Senator Hardy asked what percentages of their inspections were dental and if the machines were much different than those in medical offices.

Dr. Edward Sweeten, Radiation Physicist, Health Division, Department of Health and Human Services, Las Vegas Office, responded that dental machines are different, with specific issues. He said at inspection, they evaluate the half-value layer, which limits how much of the rays go through the patient, to the film, producing a radiograph. If the half-value layer is not sufficient, the dentist cannot interpret it and the patient may suffer. He said they also evaluate the machine's timers. Used incorrectly, the exposure times can also cause the patient to suffer. He said radiographic machines have collimators that are different than dental collimators, required by law to be a certain size and lined a certain way. He said there are different things to look for in each machine. Senator Hardy pointed out Dr. Sweeten was arguing in favor of Dr. Sill's point.

Chair Carlton closed the hearing S.B. 180 and opened the hearing on S.B. 214.

SENATE BILL 214: Revises provisions governing plans for dental care and prepaid limited health service organizations. (BDR 57-291)

Dan R. Reaser, Attorney, Lionel Sawyer & Collins; Willamette Dental Insurance, Inc., submitted written testimony in support of S.B. 214 ([Exhibit E](#), original is on file in the Research Library). He said the federal Health Maintenance Organization (HMO) Act of 1973, provided health coverage through doctors, dentists and other providers with which the HMO either employed or contracted for services. He said in 1983, NRS chapter 695D allowed HMOs strictly for dental care. Mr. Reaser stated that between 1983 and 1991, the Nevada Legislature has reviewed the dental HMO bill to ensure there was no intention to prohibit the corporate practice of dentistry. He said NRS 695D allows for single-service, for-profit corporations. From his written testimony, he pointed out at least a dozen other states enacted similar laws permitting both staff and contract-model, managed-care organizations.

Mr. Reaser said in 2007 his client, Willamette Dental Insurance, Inc., applied for a certificate of authority to operate an HMO in Nevada. They spent \$2.3 million in dental clinical facilities in Reno, working with, among others, the Washoe County School District and Renown Health. Soon after opening, Mr. Reaser said the BDE launched an investigative, disciplinary action against every dentist and hygienist working for Willamette. The BDE challenged the right of Willamette to employ the dental professionals, and claimed unprofessional conduct of the dentists and hygienists for associating an HMO plan with a school district. He said that the BDE did not proceed with the calm deliberation that would be expected of a licensing board.

Willamette sought a court ruling but lost their case. The First Judicial District Court found that it does not find anywhere in chapter 695D of the NRS the authority or ability for a holder of a certificate of authority to employ dentists. Mr. Reaser urged the Committee to pass S.B. 214 for its ability to eliminate ambiguity and improve access to health care.

Lynn S. Fulstone, Attorney, Lionel Sawyer & Collins; Willamette Dental Insurance, Inc., read a letter from Washoe County School District in favor of S.B. 214 ([Exhibit F](#)).

Senator Hardy questioned why chapter 695C of NRS could not have been amended. He said chapter 695D did not seem to cover as much public

protection. Mr. Reaser said NRS 695C is a cradle-to-grave organization, a dental HMO is perceived to be a limited-purpose HMO. He also said the Insurance Commissioner had a more robust rule-making process for dental, with most of the same safety regulations in effect, just written up in a different way. Senator Hardy asked for further information. He said he needed to understand where the protections were for the consumer. Ms. Fulstone said there are a number of the same protections in NRS 695C, 695D and 695F. They all have to apply for a certificate of authority with the same information; each has their own reserve and financial solvency requirements; but the dollar amount for a dental HMO is less because the risk is less. Senator Hardy asked for that information in writing. Mr. Reaser agreed.

Chair Carlton said it needed to be said over and over again that within S.B. 214, there is nothing restricting the Dental Board from overseeing the licensees they have and protecting the public.

Robert Moore, Vice President, Wells Fargo Insurance Services, spoke in favor of the bill. He said the bill makes perfect sense as a highly cost-effective solution to dental care, while providing the greatest amount of flexibility for employers and employees.

Ms. Kelly in response to the testimony of Mr. Reaser, said BDE must comply with the authority given them under NRS 631, when acting against his client. She said in regard to the notice of complaint to licensees, the Board makes no standing to the veracity of the argument; they just give the licensee the notice and ability to respond.

Dr. Pappas submitted written testimony in opposition of S.B. 214 ([Exhibit G](#)). He said quality patient care is a desire we all share. He said the risks associated with the provision of that care when non-licensed persons or entities are able to control the manner, method, and delivery of that care is profound. He said having a plan provider control the benefits, own and control the dental practice and employ the professionals providing the care creates conflicts that will most assuredly result in overtreatment or undertreatment for the patients, all in the interest of dollars. He said dental-plan prescribers do not subscribe to the Hippocratic Oath, but to the corporate bottom line.

Chair Carlton said she saw nothing in S.B. 214 prohibiting his Board from disciplining a dentist. Dr. Pappas said that was true, but they do not get

complaints until the harm is done. Chair Carlton replied most complaints come that way; the Board can still be an active oversight. Dr. Pappas answered they feel the bill is flawed and will increase complaints. Chair Carlton said we cannot keep the public from getting dental care because of a difference of opinion. She said the cost of dental care keeps going up, and if this is a reasonable way to keep costs down for state employees and their families, we should look at it. She said if she gets a bad dentist, the Board can still go after them. Dr. Pappas said he could supply research showing the dental model does not work.

Senator Amodei addressed the fact that dental costs keep climbing higher and management wants to provide quality benefits for their workers. He wondered what the answer was. Dr. Pappas said he would provide copies of a study tying dental to medical insurance and overinflating its costs. He said dentistry is expensive but does not have to send you into bankruptcy. He said insurance companies should be providing more preventative services, not less. Senator Amodei said as policy makers, we should be looking at the best coverage for the public and he is willing to look at the bill. Dr. Pappas revealed direct reimbursement was the best kept secret in providing dental care. He said better plans can exist by contracting with dentists, not employing dentists.

Senator Hardy wanted the record to show that committees have already dealt with businesses influencing doctors and their practices and the philosophical inconsistencies were frustrating. He said if this was a bill preventing you from owning and operating your own practice, you would be opposed to that. Dr. Pappas said if true cost savings are not affected, how they make money; he would suspect overutilization or underutilization of a plan. He asked why open that door when we have workable models right now. Senator Hardy replied we have to keep up and evolve, protections need to be there and we need to be flexible.

Dr. Pappas asked how they hold employers responsible without jurisdiction over their actions. Senator Hardy agreed that was a problem. He said that is why there are already protections for HMOs in place. He said it was the inconsistency of wanting hands off from the business side that Dr. Pappas spoke of, that he finds frustrating.

Tony Guillen, DDS, Board of Dental Examiners of Nevada, observed some companies do the hiring and firing, and when a patient has trouble, the Board goes to discipline a dentist, and finds the HMO has already fired him. He asked

who is responsible for the patient. Senator Hardy agreed liability has to go back somewhere but those issues can all be addressed without throwing out the whole concept.

Dr. Glover, in opposition, spoke on behalf of the ethical treatment of the patient. He said there are already laws preventing the ownership of a dental practice by anyone except a licensed Nevada dentist; we prohibit the splitting of fees; and we prohibit anyone influencing the diagnosis and treatment of a patient other than a licensed dentist. He said he believes if we base our patient treatments on the bottom line of what our corporate sponsors want us to do, we are much less than ethical. He urged the Committee not to pass S.B. 214, due to the potential to destroy the moralistic treatment of patients.

Senator Amodei asked if he wants a preferred provider organization (PPO) to contract with dentists. Dr. Glover said every month PPO and HMO solicitors contact them. He said some of his colleagues work with them, but his association has the ability to treat patients with their own ethical ideal treatment, not as a third party tells him to do. Senator Amodei asked if he had a feel for how many PPO contracts were in Nevada. Dr. Glover said he could only guess. He guessed 65 to 75 percent of the dentists in Reno are PPO or HMO. Senator Amodei said he would like to see the HMO costs-issue statistics Dr. Pappas offered.

Chair Carlton asked if new dentists have a choice how they practice and the cost to set up a dental practice. Dr. Glover estimated graduates were coming out of school owing \$135,000 to \$200,000 in educational debt. They have a choice between private or corporate practice, and many choose corporate practice to start. Chair Carlton asked supporters and oppositionists to reach out to each other and provide all appropriate documents.

Chair Carlton closed the hearing on S.B. 214 and opened discussion on S.B. 230.

SENATE BILL 230: Revises provisions governing certain licenses issued by the Real Estate Division of the Department of Business and Industry. (BDR 54-864)

Brad Spires, Nevada Association of Realtors (NAR); ReMax Realty, in support of S.B. 230, said the current two-year license renewal period for real estate

licensees is cumbersome, especially for rural agents and the NAR is asking it be extended to four years. He said it would decrease the administrative workload for licensees, brokers and the Real Estate Division. He added there would be no decrease in revenue to the Division. Chair Carlton mentioned a number of the Division's fees were changed and were in the amendment.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry, submitted written testimony and advised the Division is taking a neutral stance on the bill ([Exhibit H](#)).

Chair Carlton closed the hearing on S.B. 230 and opened the hearing on S.B. 254.

SENATE BILL 254: Makes various changes relating to ethical standards in real estate transactions. (BDR 1-31)

Senator Dennis Nolan, Clark County Senatorial District No. 9, submitted written testimony and introduced S.B. 254 ([Exhibit I](#)). He said the bill required attorneys selling real estate to adhere to the same standards as real estate licensees. Currently, attorneys are not required to abide by the Code of Ethics real estate licensees adhere to. He cited an example of a transaction in which he, as a real estate broker, and a local attorney were involved. The attorney accepted an offer on behalf of his client, later canceled the escrow, and had never even told his client about the transaction. The attorney had canceled to accept a better offer which later fell through; his misrepresentation caused both the buyer and seller to lose out.

Chair Carlton asked if this bill would conflict with the guidelines attorneys must obey under the State Bar of Nevada. Senator Nolan said nothing conflicts; the Bar Association would be responsible for taking actions against unethical attorneys.

Chair Carlton closed the hearing on S.B. 254 and opened the work session for S.B. 129 and S.B. 230.

Senator Copening said she was not present for the hearing on S.B. 230, so she would abstain from voting.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS S.B. 230.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR COPENING ABSTAINED FROM THE VOTE.)

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SENATOR HARDY MOVED TO DO PASS S.B. 129.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Carlton opened the hearing on S.B. 89.

SENATE BILL 89: Makes various changes to the provisions governing manufactured housing. (BDR 43-427)

Ms. Anderson submitted her proposed amendment in support of S.B. 89 ([Exhibit J](#), original is on file in the Research Library). She said the Real Estate Division is in complete support of the bill.

Marlene Lockard, Nevada Subcontractors Association, in support of the bill, said the amendment takes care of the concerns of the subcontractors. Senator Hardy said since he did not know the position of his Associated Builders and Contractors; he would abstain from the vote. Senator Schneider disclosed he has land zoned for mobile home parks, which is now senior housing apartments, and nothing in the bill will impact the value of the property. He wanted it stated for the record.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS S.B. 89.

SENATOR COPENING SECONDED THE MOTION.

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THE MOTION CARRIED. (SENATOR HARDY ABSTAINED FROM THE
VOTE.)

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There being no further business, the meeting of the Senate Committee on
Commerce and Labor was adjourned at 4:02 p.m.

RESPECTFULLY SUBMITTED:

Carol Allen,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____